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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-202387

DATE: January 20, 1982

MATTER OF: Department of Agriculture Request for Advance
Decision--Claim of Garrison Trucking Company

DIGEST:

Where Government agency acted in good faith to arrange experimental load under Memorandum of Understanding providing for loan of Government owned experimental trailer, carrier is not entitled to reimbursement for cost of transporting trailer to and from designated pick-up point, since Government did not assume risk that expected load might be canceled by a third party shipper.

The Department of Agriculture has requested our opinion regarding payment of a claim filed with it by Garrison Trucking Company, Inc. for \$532.00. Garrison seeks payment for the cost of transporting a Government-furnished experimental refrigerated trailer from Los Angeles to Fresno, California, and returning with it to Los Angeles.

We find no legal basis for the payment of the claim.

The trailer was furnished to Garrison under Memorandum of Understanding 12-45-MU-1 (MOU) between the claimant and the Department of Agriculture as part of a trailer testing program. The program seeks data regarding the usefulness of certain trailers in transporting refrigerated goods. Under the MOU, the Government loaned the trailer to Garrison, and agreed to arrange for test shipments by cooperating third-party shippers; the trucker agreed to incorporate the trailer into its fleet and:

"To take possession of the trailer at a point to be designated by the Lending Agency [the Government], [and to] transport or have the trailer transported by its agent to the particular shipping point or points from which experimental shipments have been arranged by the Lending Agency. Upon completion of the shipping experiments, [the trucker will] return the trailer to one of its terminals or equipment staging points."

According to the agency, its personnel arranged a test shipment for loading in the Fresno area for August 3, 1980 and asked Garrison to send the experimental trailer to Fresno to pick it up. Garrison did as requested, but upon arrival, its driver was advised that the load had been canceled by the third party shipper. The driver therefore returned to Los Angeles without waiting for a substitute load. The Department of Agriculture's Transportation Officer says Garrison's driver was told that the Government could obtain another load the following day, and that a load was available had he waited. Garrison, on the other hand, says its driver returned to Los Angeles only after being told that the Government did not know when another load would be available.

Garrison billed the agency for transporting the trailer to and from Fresno. Its claim has not been paid, however, because the MOU does not specifically provide for the payment of any costs. In this connection the MOU states that it is only meant to:

"define in general terms the basis on which the parties concerned will cooperate and does not constitute a financial obligation to serve as a basis for expenditures."

According to the agency, Garrison is normally paid its transportation charges by the shipper, and the parties agree that there is no duty by the Government to make payment where a revenue producing load is available.

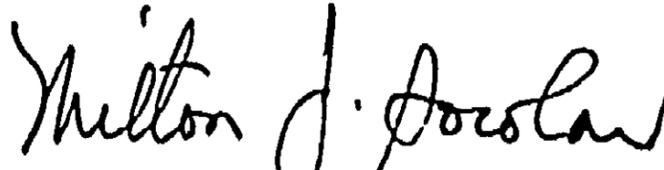
When read as a whole, we believe it is clear under the terms of the MOU that the Government did not intend to guarantee that the trucker would be reimbursed for any of its operating costs. For example, the MOU provided that the trucker would provide the fuel, servicing and minor repair needs of the trailer when it was to be used for shipping purposes; that the shipper would carry the insurance necessary to reimburse the agency in the event of loss or damage; and that the agency would not be liable for loss or damage to the cargo unless caused by a deficiency in the equipment. There is also no provision in the MOU which limits the use of the trailer to Government arranged shipments.

Thus, as we view the MOU, in consideration of the free use of the trailer and any shipments which the agency could arrange, the trucker agreed to cooperate with the Government by exchanging data during the course of the shipping experiments; the trucker would retain all operating revenues and concomitantly would bear all of the financial risk other than

the cost of major repairs to the trailer or cargo loss due only to the failure of the Government's equipment.

It is, of course, an implicit condition of the MOU that the parties will act in good faith in their dealings with each other and that the agency, for its part, could not request the trucker to pick up a cargo which did not exist when the request was made and expect that it would be free from any liability under the MOU if a revenue producing load did not materialize. We think the record shows that the agency acted in good faith here and that it did all that could reasonably be expected of it. The agency arranged for a shipment of melons; when the truck arrived to pick up the cargo, both the government representative and the trucker were told that the shipment was canceled because the buyer canceled his order for them due to a sudden price increase resulting from a shortage of the commodity at that time. Neither the Government nor the trucker was aware of this factor until the last moment. According to the agency's agricultural marketing specialist, other truckers also lost expected loads at this time.

Under the circumstances, we find no basis for concluding that the agency assumed the risk that an anticipated load would be canceled by a third party shipper, and we find no basis for payment of Garrison's claim.

for 
Comptroller General
of the United States